

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 965 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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HANSABEN MELABHAI SOLANKI

Versus

COMPETENT OFFICER

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Appearance:

MR BN RAVAL for Petitioner

MR U.A. TRIVEDI, GOVERNMENT PLEADER for Respondent

No. 1 & 3

MRS KETTY A MEHTA for Respondent No. 2

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CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 19/06/97

ORAL JUDGEMENT

Rule. The learned Counsel who appears for the respondents waives service of the rule and requests for taking up the matter for final disposal.

The petitioner challenges the order made by the

learned City Civil Judge, Court No.9, Ahmedabad in Eviction Appeal No. 12/95 on 30.9.96 dismissing the petitioner's appeal for want of prosecution as also on merits.

It is contended on behalf of the petitioner that the petitioner had engaged an Advocate to appear in the matter, but because he did not remain present, the appeal was dismissed for default. However, while doing so the learned Judge had also given a decision on merits. It was submitted that while deciding the matter on merits, the learned Judge over-looked the fact that he had no jurisdiction to decide the appeal, in view of the provisions of Section 9(6) of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972.

At the hearing of this petition, it was not disputed on behalf of the respondents that the appeal of the petitioner was dismissed for non-prosecution because the Advocate could not remain present and that there was sufficient cause in favour of the petitioner for giving an opportunity of being heard on merits by restoring the matter, in which event the question of jurisdiction that may be raised on behalf of the petitioner could be gone into by the learned Judge in the light of the provisions of Section 9(6) of the Act.

The petitioner had to suffer a decision on merits because of the fault on the part of her lawyer, who failed to appear. The consequences of the decision which is given on merits simultaneously while dismissing the appeal for non-prosecution, are serious in the instant case and the petitioner would lose possession of her premises allotted by the Gujarat Housing Board under the scheme. Moreover, while deciding the matter on merits, the learned Judge has not taken into account the provisions of Section 9(6) of the Act. The petitioner has therefore made out a good ground for setting aside the said order and remanding the matter for disposal on merits in accordance with law. The impugned order dated 30.9.96 is hereby set aside and the matter is remanded to the appellate forum for reconsideration of the appeal filed by the petitioner and disposal of the same in accordance with law. Rule is made absolute accordingly with no order as to costs.

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\*Mohandas